



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of C.R., Ancora
Psychiatric Hospital

CSC Docket No. 2017-2191

Discrimination Appeal

ISSUED: JULY 24, 2018 (CSM)

C.R., a Program Coordinator Mental Health with Ancora Psychiatric Hospital, appeals the determination of the former Assistant Commissioner of Human Resources, Department of Human Services¹, that the appellant did not present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, an African American female, filed a complaint alleging that Ancora issued her an official reprimand for leaving grounds without authorization while similarly situated non-African American employees were not disciplined for the same offense. She also claimed that the appointing authority denied her training opportunities while providing it to non-African American employees. Subsequently, the appellant alleged that her discrimination complaint was filed against R.P., a Social Work Supervisor, and C.V., an Administrator of Psychiatric Social Services. Further, the appellant claimed that M.M., an Employee Relations Coordinator, R.P., and C.V., retaliated against her for filing a complaint when disciplinary charges were filed against her for abusing FMLA.

The Office of Equal Employment Opportunity (EEO) investigated the matter and could not substantiate a violation of the State Policy. Specifically, the investigation found that R.P. responded to the appellant’s request for training when she left her a voicemail message indicating that the appellant could not attend

¹ Ancora Psychiatric Hospital is now within the Department of Health.

training because she failed to provide advance notice. However, the other social workers who attended the training were supervised by a different supervisor who authorized them to attend the training. With respect to the allegation that C.V. imposes discipline against African-American Social Workers while Caucasian Social Workers are counseled or receive written warnings, the investigation found that in 2014 the appellant and a Caucasian both received corrective action. However, in 2015, the appellant recommitted the same offense and she was issued an official reprimand. Further, her claim that a letter was sent by an African-American union representative regarding the reassignment of African American Social Workers was unfounded since the EEO did not receive that complaint. In response to the allegation that she was the only employee to receive a memorandum from R.P. not permitting her to attend community trips or receive compensatory time without prior approval, the investigation found that the appellant failed to obtain R.P.'s approval to transport a client for a trip and did not obtain authorization for compensatory time. It explained that the appellant received the memorandum because she committed the same offense several times. Regarding the appellant's claim that a Caucasian Social Worker told her that she altered her work schedule for two weeks without approval, the investigation found that the employee's timesheet did not reflect that she altered her schedule for two weeks. However, on June 16, 2016, that employee transported a consumer to jail. In the case of the appellant, a prior corrective action existed in the form of a written warning dated May 9, 2014 for altering her work schedule. Therefore, since the appellant again committed the same infraction, on December 31, 2015, she received an official reprimand.

In response to the appellant's assertion that she was the only Social Worker who received an email stating that if she attended a particular training she would have to show documents that she paid and stayed the entire time, the investigation found that the email indicated that documentation was needed from that course showing that the appellant attended in order for her to be paid. With respect to her allegation that her request to take a client to immigration was denied, but a Caucasian male received approval, the investigation found that the client did not need the appellant's assistance and that the appointing authority utilizes Lutheran Social Ministries to process immigration for clients. Concerning the appellant's claim that she received written warnings from R.P. for lateness and written warnings for late progress notes while similarly situated non-African-American employees were not disciplined for the same offense, the investigation found that these actions were proper as she was more than a week late for three clients' progress notes and other progress notes that were not written. The investigation also confirmed the appellant's allegation that R.P. and C.V. required her to complete a time off request form when leaving early to use FMLA. However, the investigation found that R.P. follows the same practice with all of her social workers who use FMLA to ensure coverage. Further, the disciplinary charges against her for abusing FMLA in July for exceeding the amounts of callouts permitted were

warranted based on the appellant's FMLA approval letter. Finally, the investigation found that an email indicating that the appellant's failure to return to work after a scheduled mediation hearing would be considered unauthorized did not implicate the State Policy.

On appeal, the appellant states that the EEO disregarded all of the relevant information and documentation that she provided that supports her complaint. In this regard, she states that she was asked to attend training by her team, immediately called R.P. and C.P. to request permission, but did not receive a response. Thereafter, she sent an email to obtain permission to attend but never received a response. As she sent the email on January 5, 2016, one day prior to the training scheduled for January 6, 2016, the appellant maintains that R.P. and C.P. had advance notice, but deliberately ignored her request. Additionally, seven months later, R.P. sent her an email following up on the training. Therefore, the appellant questions why R.P. would be asking her about the training several months later if she denied her request due to not having advance notice. The appellant also reiterates that C.V. and R.P. exercise differential treatment toward African-American Social Workers. In this regard, she states that for her first offense, she never received oral warnings, counseling or a meeting with her supervisor to address any of her concerns. For example, the appellant claims that a Caucasian male told her that he altered his work schedule more than three times and he was only counseled by C.V. and when he committed the fourth offense he was given a written warning. With respect to receiving a memorandum not to take community trips, the appellant argues that it is not accurate that she committed the same offense several times. The appellant states that she received permission on March 4, 2014 and on March 5, 2014 she did not get permission to complete the trip. However, she notes that she was unable to complete that assignment on the first day due to unforeseen circumstances and even received an email from C.V. stating that she did a fantastic job. Regarding the finding that another Social Worker never altered her work schedule, except for when she transported a client to jail, the appellant states that this individual called her and told her that R.P. warned her not to do it again, but changed her timesheet to reflect flextime. Further, the appellant complains that the dates on her official reprimands are incorrect and she was actually granted permission to take off.

Regarding her complaint about receiving a personalized email with conditions, the appellant states that the EEO never addressed her question and that in a training that was later offered, C.V. sent an email to the entire department with the conditions that needed to be satisfied if staff attended training. Further, she claims that when she attempts to get permission for a community trip, she is either ignored or told that her assistance is not needed. The appellant details the situations involving her late progress notes and questions why other Social Workers who had late progress notes were not randomly audited. Further, she argues that the investigation did not address the fact that she received

counseling and then two months later received a written warning for the same progress note. With respect to her filling out time off requests for FMLA, the appellant questions why she has to fill out such a request when there is documentation indicating that she does not have to fill out such a request. Moreover, the appellant emphasizes that the EEO investigator told her in her meeting that it was retaliation to get disciplined for using FMLA time. In this regard, she states that her doctor provided documentation covering the days she was absent that led to her 15-day suspension. Finally, the appellant disagrees with the finding that being sent an email indicating that if she did not return to work after a mediation that it would be considered unauthorized does not implicate the State Policy. In support of her arguments, the appellant provides copies of emails, forms, correspondence, and various policies and procedures. The appellant requests that C.V. be demoted, her disciplinary actions dismissed, and compensatory and punitive damages.

In response, the EEO reiterates that the employees who attended the training did not report to R.P. and were authorized to attend training by their supervisor. Further, in 2014, the appellant and S.Z. received corrective action for leaving their respective work areas. However, in 2015, the appellant committed the same offense and was issued an official reprimand. With respect to community trips, the EEO states that the appellant was issued a memorandum on May 9, 2014 and May 30, 2014 because of the issues involved in the community trips she attended with a client on March 4, 2014 and March 5, 2014. This directive states that the appellant is required to obtain written approval from either R.P. or C.V. before attending community trips and does not state that she is not to attend community trips. Regarding additional compensation, the May 30, 2014 memorandum notes that C.V. gave the appellant permission to transport a patient to Elizabeth, but did not give her permission to incur compensatory or overtime on the trip. Although, she did not obtain approval prior to incurring compensatory time on the March 4, 2014 trip, C.P. approved six hours of compensatory time because the trip was authorized by R.P. However, on the March 5, 2014 return community trip, C.V. determined that the appellant was not entitled to compensatory time since neither that trip or compensatory time was approved. Further, R.P. was not aware of the appellant's whereabouts on March 5, 2014 as the appellant did not contact her at any time during the day. In response to the appellant's claims about altering schedules, the investigation found that N.F.'s timesheets did not reflect that she altered her schedule, but on June 16, 2016 she transported a consumer to jail. However, the appellant received a written warning on May 9, 2014 for altering her schedule on April 14, 2014 by arriving to work at 11:30 a.m. without calling in late or requesting a time off form, working through lunch, which is not permitted, and signing out at 6:30 p.m. The warning noted that staff must sign in by 8:30 a.m., take an hour lunch between 12 noon and 1:00 p.m., and leave by 4:30 p.m.

The EEO states that the email regarding the required documentation, specifically stated “Sorry, I forgot to mention to that you need to obtain some type of documentation from the course showing that you attended the full course in order to be paid for the time you are there.” With respect to her request to take a client to the bank and Immigration, the investigation found that R.P. denial was not racially motivated. Specifically, the investigation found that R.P. told the appellant that she felt her time would be better spent getting reacquainted with her patients and where they were in the discharge process. The appellant was also advised that Lutheran Social Ministries is used to process immigration matters for clients. With respect to the appellant’s assertion that there was a disparity in discipline for late progress notes, the investigation found that the supervisor meets with each Social Workers about late progress notes and gives them an opportunity to correct these deficiencies by a certain deadline. If the deficiencies are not corrected by the deadline, corrective action progresses to disciplinary action. Regarding filling out time off requests for leaving early, the investigation found that R.P. requires all employees, even those using FMLA, not just the appellant, to submit these requests to ensure appropriate coverage and staff location. Moreover, as she exceeded the approved allotted FMLA leave based on her doctors May 17, 2016 approval letter, the disciplinary action taken against her was not retaliatory. Finally, the EEO maintains that M.M. sending the appellant an email advising her that administrative action would be taken for her unauthorized absence for calling out 2.5 hours of unapproved vacation leave and not returning to work, does not implicate the State Policy. Unlike AL time and sick time, the appellant’s union contract indicates that vacation time must be approved in advance and cannot be called in.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. Additionally, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)(3)*.

The Civil Service Commission has conducted a review of the record and finds that the appellant has not met her burden of proof. The investigation included interviewing ten witnesses and the review of more than fifty relevant documents and it could not substantiate a violation of the State Policy. While the appellant argues that her asserted January 4, 2016, 3:20 p.m. phone call and January 5, 2016, 12:00 noon follow-up email to request to attend training scheduled for “tomorrow

and next week” reflect that R.P. and C.V. had advance notice, the investigation found that R.P. left her a voicemail message indicating that she could not attend because she failed to give advance notice. While another supervisor may have authorized such training for their subordinates, it does not appear unreasonable that a supervisor would require more than one day’s notice to consider such a request. Further, the fact that R.P. sent the appellant an email almost eight months later inquiring if she attended a February 2016 or May 2016 training does not evidence that the decision to deny participation for a training starting on January 6, 2016 was discriminatory. Moreover, there was no evidence that C.V. imposed discipline differentially toward African-American Social Workers. For example, both S.Z. and the appellant first received corrective action for leaving their work areas in 2014. However, the appellant recommitted the same offense in 2015 and was issued a written reprimand. Additionally, the appellant failed to obtain approval for compensatory time, but it was nonetheless provided, for a community trip. The investigation also found that N.F. did not alter her work schedule, except for one occasion based on bringing a consumer to jail in 2016. The appellant concedes in her submission that N.F. told her that she was counseled for this. However, the appellant had a prior corrective action because she did not call in late for work on April 14, 2014 and altered her schedule by working through lunch and signing out of work later than authorized. It also found that the appellant committed the same infraction again and on December 31, 2015 received an official written reprimand. Thus, the appellant’s corrective and disciplinary actions were based on her repeated, unacceptable behavior and infractions. There is nothing in the record or in her appeal submissions to suggest that the EEO’s investigation was on these matters was not thorough and impartial or that these actions were in violation of the State Policy.

The incidents concerning her receipt of an email requesting she provide documentation for a course she attended, assisting a client with immigration, and receiving written warnings for late progress notes were all thoroughly investigated and addressed in the EEO determination. Additionally, R.P. requires all of her subordinates using FMLA to follow the practice of completing time off requests and the EEO found that the appellant is required to notify her supervisor when she leaves work early. In this regard, it is necessary for a subordinate to apprise a supervisor if she or he leaves work early. The fact that the appellant was charged with abusing her FMLA by exceeding the amount of callouts period does not demonstrate that she was being retaliated against for filing an EEO complaint. Notwithstanding the appellant’s arguments to the contrary, none of the documentation or arguments in her appeal of these issues establish that the investigation was not thorough or impartial or support a violation of the State Policy. Finally, the email sent by M.M. indicating that if the appellant did not return to work after her scheduled mediation hearing would be considered unauthorized does not implicate the State Policy as her union contract requires request for vacation be made in advance.

Accordingly, the Commission finds that the EEO's investigation was thorough and impartial, and the record supports a finding that there was a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON THE
18TH DAY OF JULY, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: C.R.
Rachel L. Gervais
Mamta Patel
Records Center